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7	Legal Representatives for Complainant	
8	BEFORE THE RESPIRATORY CARE BOARD DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
9		
10	STATE OF CALIF	CORNIA
11	In the Matter of the Petition to Revoke Probation	Case No. R-1988
12	Against: SCOTT WAYNE ROWELL	FIRST AMENDED PETITION TO REVOKE
13	1404 E. Vine Court	PROBATION
14	Visalia CA 93292	
15	Respiratory Care Practitioner License No. 4692	
16	Respondent.	
17		
18	Complainant alleges:	
19	<u>PARTIES</u>	
20	Stephanie Nunez (Complainant) brings this Petition to Revoke Probation	
21	solely in her official capacity as the Executive Officer of the Respiratory Care Board of California,	
22	Department of Consumer Affairs.	
23	2. On or about June 21, 1985, the R	Respiratory Care Board issued Respiratory
24	Care Practitioner License Number 4692 to Scott Wayne Rowell (Respondent). The Respiratory	
25	Care Practitioner License was in effect at all times relevant to the charges brought herein and will	
26	expire on October 31, 2006, unless renewed.	
27	3. In a disciplinary action entitled "In the Matter of Accusation Against Scott	
28	Wayne Rowell," Case No. R-1898, the Respiratory Car	re Board issued a decision effective August
	1	

1	16, 2004 in which Respondent's Respiratory Care Practitioner license was revoked. However, the		
2	revocation was stayed and Respondent's license was placed on probation for a period of two (2)		
3	years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is		
4	incorporated by reference.		
5	<u>JURISDICTION</u>		
6	4. This Petition to Revoke Probation is brought before the Respiratory Care		
7	Board (Board), Department of Consumer Affairs, under the authority of the following laws. All		
8	section references are to the Business and Professions Code unless otherwise indicated.		
9	5. Section 3710 of the Code states: "The Respiratory Care Board of California,		
10	hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the		
11	Respiratory Care Practice Act]."		
12	6. Section 3718 of the Code states: "The board shall issue, deny, suspend, and		
13	revoke licenses to practice respiratory care as provided in this chapter."		
14	<u>COST RECOVERY</u>		
15	7. Section 3753.5, subdivision (a) of the Code states:		
16	"In any order issued in resolution of a disciplinary proceeding before the board, the		
17	board or the administrative law judge may direct any practitioner or applicant found to have committed		
18	a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation an		
19	prosecution of the case."		
20	8. Section 3753.7 of the Code states:		
21	"For purposes of the Respiratory Care Practice Act, costs of prosecution shall include		
22	attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing,		
23	and service fees."		
24	9. Section 3753.1 of the Code states:		
25	"(a) An administrative disciplinary decision imposing terms of probation may include,		
26	among other things, a requirement that the licensee-probationer pay the monetary costs associated with		
27	monitoring the probation. "		
28			

## 1 FIRST CAUSE TO REVOKE PROBATION 2 (Biological Fluid Testing) 10. At all times after the effective date of Respondent's probation, Condition 2 3 4 stated: 5 "Respondent, at his expense, shall participate in random testing, including, but not 6 limited to, biological fluid testing ... The length of time shall be for the entire 7 probation period...At all times, Respondent shall fully cooperate with the Board or 8 any of its representatives, and shall, when directed, submit to such tests and samples 9 for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other 10 controlled substances." 11 11. Respondent's probation is subject to revocation because he failed to comply 12 with Probation Condition 2, referenced above. The facts and circumstances regarding this 13 violation are as follows: 14 A. Respondent was informed that the Board had contracted with 15 Compass Vision Inc. (CVI) to perform random testing, collection and analysis of biological fluids. 16 Respondent was informed that he was responsible to telephone an automated, toll free number on 17 a daily basis to determine if he was required to report to a collection site for testing. The date and 18 time of all calls made to the system are logged into CVI's database. 19 В. Respondent failed to call CVI on the following dates in 2004: 20 December 5, 8, 12, 16, 19, 24, 26, 27, 31; in 2005: January 7, 8, 9, 12, 20, 22, February 13, 19, 21 25,27; March 3, 5, 6, 10, 19, 25, 30; April 7, 15, 17, 21, 22, 27, 29; May 1, 4, 7, 12, 13, 14, 19, 22 21; Jun 4, 8, 10, 11, 13, 17, 18, 23, 24, 29, July 1, 18, 21, 23; August 20, 2005; September 18, 19, 23 2005... C. 24 On January 4, 2005, at approximately 6:11 a.m., respondent 25 telephoned CVI and was directed to provide a specimen for testing and analysis. Respondent 26 failed to appear as directed. 27 /// 28 ///

1	SECOND CAUSE TO REVOKE PROBATION	
2	(Abstention from alcohol)	
3	12. At all times after the effective date of Respondent's probation, Condition 3	
4	stated:	
5	"Respondent shall completely abstain from the possession or use of alcohol"	
6	13. Respondent's probation is subject to revocation because he failed to comply	
7	with Probation Condition 3, referenced above. The facts and circumstances regarding this	
8	violation are as follows:	
9	A. EtG is a biological marker for alcohol use, and can be detected in	
10	urine for up to five days after alcohol use. Respondent tested positive for EtG on the following	
11	dates: October 18, 2004 in the amount of 740 nanograms per milliliter; May 6, 2005, in the	
12	amount of 5100 nanograms per milliliter; July 20, 2005 in the amount of 870 nanograms per	
13	milliliter; August 8, 2005 in the amount of 1400 nanograms/milliliter.	
14	B. On or about August 9, 2005, in a telephone call, respondent	
15	admitted to his probation monitor that he drank champagne on August 6, 2005. In a Drug	
16	Questionnaire which the respondent completed and signed on September 20, 2005 under penalty	
17	of perjury, respondent admitted that he drank "2 toast glasses of champagne at wedding on	
18	8/7/05."	
19	<u>PRAYER</u>	
20	WHEREFORE, Complainant requests that a hearing be held on the matters herein	
21	alleged, and that following the hearing, the Respiratory Care Board issue a decision:	
22	1. Revoking the probation that was granted by the Respiratory Care Board of	
23	California in Case No. R-1898 and imposing the disciplinary order that was stayed thereby	
24	revoking Respiratory Care Practitioner No. 4692 issued to Scott Wayne Rowell;	
25	2. Revoking or suspending Respiratory Care Practitioner No. 4692, issued to	
26	Scott Wayne Rowell;	
27		
28	///	

1	3. Ordering Scott Wayne Rowell to pay the Respiratory Care Board the costs		
2	of the investigation and enforcement of this case, and if probation is continued or extended, the		
3	costs of probation monitoring;		
4	4. Taking such other and further action as deemed necessary and proper.		
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6	DATED: October 11, 2005		
7			
8	Original signed by Christine Molina for:		
9	<u>Original signed by Christine Molina for:</u> STEPHANIE NUNEZ Executive Officer		
10	Respiratory Care Board of California Department of Consumer Affairs State of California		
11	State of California Complainant		
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